

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

May 3, 1985

IN REPLY REFER TO:

Utah Public Service Commission
Heber M. Wells Building
160 East 300 South Street
P.O. Box 5802
Salt Lake City, Utah 84110
Attn: David Scott, Legal Counsel,
for the Commission

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission
Office of the Secretary

Gentlemen:

The Commission is again updating its list of states which have certified that they regulate pole attachment rates, terms, and conditions to insure that all certifications comply with amended Section 1.1414 of the Commission's Rules, 47 C.F.R. §1.1414. That Section was recently amended to implement certain provisions of the Cable Communications Policy Act of 1984. Report and Order in MM Docket No. 84-1296, FCC 85-179 (released April 19, 1985). Among the amendments is new Section 1.1414(a)(3), 47 C.F.R. §1.1414(a)(3), which provides that a state regulating pole attachments must certify to this Commission that

It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state)

With the exception of a statement about methodology, your certification already includes all of the required information. Accordingly, if your state's rules and regulations include a specific methodology which has been made publicly available in the state, please so certify to the Commission by May 30, 1985.

Receipt of such information by May 30, 1985, will permit the Commission to retain your state on our certification list. Therefore, your prompt attention and cooperation are appreciated.

Please address your certification and any inquiries to:

Federal Communications Commission
Attention: Margaret Wood, Esq.
Room 6206
1919 M Street, N.W.
Washington, D.C. 20554
Telephone (202) 632-4890

Sincerely,



Howard M. Wilchins
Deputy Chief, Enforcement Division

Enclosure

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations was amended to read as follows:

A. Part 1 - Practice and Procedure.

1. Section 1.1414 is amended by revising paragraphs (a)(1) and (a)(2) and adding new paragraphs (a)(3) and (e) to read as follows:

§1.1414 State certification.

- (a) If the Commission does not receive certification from a state that:
 - (1) It regulates rates, terms and conditions for pole attachments;
 - (2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services; and,
 - (3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state), it will be rebuttably presumed that the state is not regulating pole attachments.

* * * * *

- (e) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:
 - (1) within 180 days after the complaint is filed with the state, or
 - (2) within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.



SCOTT M. MATHESON
GOVERNOR

Public Service Commission of Utah

4th FLOOR, HEBER M. WELLS BUILDING, 160 EAST 300 SOUTH
P.O. BOX 5850, SALT LAKE CITY, UTAH 84110
TELEPHONE: 530-6716

COMMISSIONERS

BRENT H. CAMERON, CHAIRMAN
DAVID R. IRVINE
JAMES M. BYRNE

ADMINISTRATIVE SECRETARY
GEORGIA B. PETERSON

February 8, 1985

Margaret Wood, Esq.
Federal Communications Commission
Room 6206
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Wood:

In response to your inquiry regarding rules and regulations pertaining to the oversight and regulation of the rates, terms and conditions of pole attachment agreements, please be informed that the authority we exercise is derived from Section 54-4-13 of the Utah Code Annotated. We do not specifically have "rules and regulations" other than this authority to govern our jurisdiction over these agreements. It is a requirement that all joint-use agreements be filed with the Commission. Procedurally, if a disagreement were to surface between two parties, a complaint would be filed with the Commission and typically depending on the calendar of the individual/individuals hearing the matter, would be assigned to an administrative law judge to be heard within 60 days of filing.

Hopefully this will satisfy your requirement for response addressing this matter.

Very truly yours,

David Stott
Legal Counsel for the Commission

RECEIVED

FEB 25 1985

ENFORCEMENT DIVISION



STATE OF UTAH
DEPARTMENT OF BUSINESS REGULATION

SCOTT M. MATHESON, GOVERNOR

DENNIS G. RITZ, EXECUTIVE DIRECTOR

January 9, 1985

RECEIVED

JAN 15 1985

ENFORCEMENT DIVISION

Margaret Wood, Esq.
Federal Communications Commission
Room 6206
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Wood:

In response to your inquiry regarding rules and regulations for pole attachment rates, terms, and conditions please find attached the section of the 1953 Utah Code Annotated (§54-4-13) which addresses this subject. The date-history of enactment and amendments is found at the end of the text of the regulation.

If you need any further information, please give me a call at (801) 530-6695.

Sincerely yours,

Thomas F. Peel, Manager
Telecommunications Section

TFP/jhb
Attachment

be subserved thereby, or shall find that two or more telegraph or telephone corporations have failed to establish joint rates, tolls or charges for service by or over their said lines and that joint rates, tolls or charges ought to be established, the commission may, by its order, require that such connection be made, except where the purpose of such connection is primarily to secure the transmission of local messages or conversations between points within the same city or town, and that conversations be transmitted and messages transferred over such connections under such rules and regulations as the commission may establish and prescribe, and that through lines and joint rates, tolls and charges be made and be used, observed and be in force in the future. If such telephone or telegraph corporations do not agree upon the division between themselves of the cost of such physical connection or connections, or upon the division of the joint rates, tolls or charges established by the commission over such through lines, the commission shall have authority, after a further hearing, to establish such division by supplemental order.

History: L. 1917, ch. 47, art. 4, § 11; C. L. 1917, § 4808; R. S. 1933 & C. 1943, 76-4-12.

Collateral References.

Telecommunications—152, 267.
86 C.J.S. Telegraphs, Telephones, Radio, and Television §§ 157, 267.

Connecting lines, 52 Am. Jur. 77-79, 119, Telegraphs and Telephones §§ 46, 47, 90.

Regulations or provisions upon requiring physical connection of telephone lines, 16 A. L. R. 352.

Right and duty of telephone companies to make or discontinue physical connection of exchanges or lines, 76 A. L. R. 953.

54-4-13. Joint use of properties by utilities—Adjustment of costs—Cable television easement rights.—(1) Whenever the commission shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over or under any street or highway, belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment, or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may, by order, direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use is directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof.

(2) Whenever a public utility including its successors, assigns, lessees, licensees and agents, is granted a right-of-way easement to construct, operate, maintain or remove utility facilities, electric power and other facilities as it may require upon, over, under and across land or upon, over, under and across a dedicated public utility strip, and such public utility has also entered into a pole attachment contract with a cable television company which has been granted a franchise by a city, county, municipal

or other public authority including the right to use the wires, conduits, cables, or poles of such public utility, and providing for the attachment or installation of wires, cables, and other equipment of a cable television company, to certain poles or in certain conduits of such public utility under controlled conditions designed to ensure the continued safe operation of the utilities service and facilities without any additional burden on the grantor's property then, and in that event, the cable television company, has the right to share in and enjoy the use of the right-of-way easement, subject to the terms and conditions provided in the pole attachment contract, and the right-of-way easement or interest granted the public utility is apportionable to the cable television company under the following limitations or conditions:

(a) Consent is secured from the private property owner where the easement is located except this requirement shall not apply in the case of a dedicated public utility strip.

(b) The public service commission determines that under the terms and conditions of the pole attachment contract the use of the utilities facilities by the cable television company will not interfere with the primary utility function or render its facilities unsafe, and that the contract is in the public interest.

(c) The right-of-way easement is not restricted to the sole use of the public utility; provided, that such restriction shall not apply in any easement granted for the use of a dedicated public utility strip.

(d) The use contemplated by the cable television company is the same or similar to that granted the public utility and that such use will not impose an additional burden upon the servient tenement.

(e) The use of the easement by the cable television company will not cause irreparable injury or damage to the grantor's property.

History: L. 1917, ch. 47, art. 4, § 12; C. 1917, § 4809; R. S. 1933 & C. 1943, 76-443; L. 1973, ch. 117, § 1.

Collateral References.

Public Service Commissions—C. 1917, § 4809; R. S. 1933 & C. 1943, 76-443; L. 1973, ch. 117, § 1.

Compiler's Notes.

The 1973 amendment inserted the subsection designation "1" and added subsection 2).

54-4-14. Safety appliances—Regulation.—The commission shall have power, by general or special orders, rules or regulations, or otherwise, to require every public utility to construct, maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions, and block or other system of signaling, and to establish uniform or other standards of construction and equipment, and to require the performance of any other acts

PUBLIC SERVICE COMMISSION



MILLY O. BERNARD
Chairman

David Irvine
Commissioner

Brent H. Cameron
Commissioner

STATE OF UTAH
330 EAST 4TH SOUTH
SALT LAKE CITY, UTAH 84111
833-8811

David L. Stott
Secretary

June 10, 1981

Secretary, FCC
Attention: Margaret Wood
Pole Attachment Branch
Common Carrier Bureau
1919 M Street, NW
Washington, DC 20554

RECEIVED
JUN 16 3 36 PM '81
TARIFF DIVISION

REGARDING: CASE NO. 81-999-08, Cable Television Pole Attachment Agreements With Utah Public Utilities

Dear Ms. Wood:

This letter will confirm that the statutory waiting period for effectiveness of the Commission's Order dated May 15, 1981, has expired and the Order is affirmed and made permanent.

Very truly yours,

David L. Stott
Secretary

ch